

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROBERT L. REDD</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 1,011,443
	)	& 1,011,444
<b>AGCO</b>	)	
Self-Insured Respondent	)	

**ORDER**

Respondent appealed the June 1, 2004 Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on December 14, 2004.

**APPEARANCES**

James S. Oswalt of Hutchinson, Kansas, appeared for claimant. Larry D. Shoaf of Wichita, Kansas, appeared on behalf of respondent.

**RECORD AND STIPULATIONS**

There are no changes to the record or the parties' stipulations as set forth in the June 1, 2004 Award.

**ISSUES**

Claimant alleges he injured his right leg on September 18, 2001, working for respondent. That claim was designated Docket No. 1,011,444. Claimant also alleges he injured his low back at work due to a series of repetitive traumas ending July 9, 2002, which was claimant's last day of employment with respondent. That claim was designated Docket No. 1,011,443.

In the June 1, 2004 Award, Judge Moore determined claimant sustained a nine percent permanent partial disability to the right lower extremity under the schedules set forth in K.S.A. 44-510d for the September 18, 2001 accident. In addition, the Judge determined claimant sustained a 73.75 percent work disability (a permanent partial general disability greater than the functional impairment rating) for the low back injury.

Respondent contends Judge Moore erred. Respondent argues claimant failed to prove he injured either his right leg or low back working for the company. The company also argues claimant failed to prove he provided timely notice of either alleged injury. In the alternative, respondent argues claimant has sustained a nine percent impairment to the right lower extremity and a five percent whole person functional impairment due to the low back injury.

In the event the Board determines claimant is entitled to receive a work disability award for the low back injury, respondent urges the Board to find claimant has failed to make a good faith effort to find new employment. Accordingly, respondent asks the Board to impute a post-injury wage of \$426 per week for purposes of the permanent partial general disability formula of K.S.A. 44-510e. The company also requests the Board to find, at most, a task loss of 29.7 percent, which was based upon Dr. Philip R. Mills' testimony.

Conversely, claimant requests the Board to affirm the June 1, 2004 Award.

The issues before the Board on this appeal are:

**Docket No. 1,011,444**

1. Did claimant injure his right leg on September 18, 2001, in an accident that arose out of and in the course of his employment with respondent?
2. If so, did claimant provide his employer with timely notice of that accidental injury?
3. What is the nature and extent of the right leg injury?

**Docket No. 1,011,443**

4. Did claimant injure his low back in a series of repetitive traumas through July 9, 2002, that arose out of and in the course of his employment with respondent?
5. If so, did claimant provide his employer with timely notice of the accidental injury?
6. Is claimant entitled to receive temporary total disability benefits for that injury?
7. What is the nature and extent of the injury?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the June 1, 2004 Award should be affirmed. The Judge has set forth detailed findings and conclusions, which the Board adopts as its own.

**Docket No. 1,011,444**

In short, claimant injured his right leg on September 18, 2001, while pulling on a table used in operating a drill press. Claimant immediately reported his symptoms to a coworker, who was in charge of claimant's work area, and to respondent's medical dispensary, which attributed claimant's symptoms to a blood clot rather than to his work. Due to the accident, claimant has meralgia paresthetica in the right leg, which was rated by respondent's medical expert witness, Dr. Philip R. Mills, as comprising a nine percent functional impairment to the right lower extremity under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.).

The Board affirms the Judge's conclusions that claimant sustained personal injury by accident on September 18, 2001, that arose out of and in the course of his employment with respondent. The Board also affirms the Judge's finding that claimant provided respondent with timely notice of that accidental injury, which resulted in a nine percent functional impairment to the right leg.

Accordingly, the Board concludes claimant is entitled to receive disability benefits under the schedules in K.S.A. 44-510d for the September 2001 accident, which resulted in a nine percent permanent partial disability to the right leg.

**Docket No. 1,011,443**

Claimant injured his low back in a series of traumas through July 9, 2002, which was claimant's last day of employment with respondent. Claimant did not work for respondent after July 9, 2002, as the company could not accommodate the work restrictions that had been placed on claimant due to his low back problems and which specifically noted claimant's low back complaints were related to his work. Claimant has a low back strain or sprain due to the work he performed for respondent, which Dr. Mills rated as comprising a five percent whole person functional impairment under the *Guides* (4th ed.).

The Board affirms the Judge's conclusions that claimant sustained injury to his low back that arose out of and in the course of his employment with respondent through his last day of working for respondent, July 9, 2002. The Board also affirms the Judge's finding that claimant provided respondent with timely notice of the low back injury, which comprises a five percent whole person functional impairment.

Likewise, the Board agrees with the Judge that claimant is entitled to receive temporary total disability benefits for the period from July 10, 2002, to May 16, 2003, as respondent would not permit claimant to work during that period due to medical restrictions for his low back.

The Board also affirms the Judge's finding that claimant has expended an unsuccessful good faith effort in attempting to find other work. Finally, the Board affirms the Judge's findings and conclusions that claimant has a 100 percent wage loss and a 47.5 percent task loss for the permanent disability formula set forth in K.S.A. 44-510e. Despite genuine efforts to find other work, claimant was not employed at the time of the November 2003 regular hearing. Consequently, the Judge appropriately used 100 percent as the difference between claimant's pre- and post-injury wages for purposes of the permanent disability formula. And the Board finds no persuasive reason to modify the 47.5 percent task loss determined by the Judge by averaging the task loss percentages provided by Dr. Mills and Dr. Pedro A. Murati, who was claimant's expert medical witness.

Accordingly, the Board concludes claimant is entitled to receive a 73.75 percent work disability under K.S.A. 44-510e for his low back injury.

**AWARD**

**WHEREFORE**, the Board affirms the June 1, 2004 Award entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2005.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: James S. Oswalt, Attorney for Claimant  
Larry D. Shoaf, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director